

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

DEMONTE REESE §
VS. § CIVIL ACTION NO. 1:21-CV-105
SHERIFF, JEFFERSON COUNTY §

AMENDED MEMORANDUM ORDER ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION

Petitioner Demonte Reese, a pre-trial detainee confined at the Jefferson County Correctional Facility, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The Court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The magistrate judge recommends dismissing the petition without prejudice for failure to exhaust state court remedies.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record and pleadings. No objections to the Report and Recommendation of United States Magistrate Judge were filed by the parties.

Because the petitioner is a pretrial detainee, his habeas petition is properly brought under 28 U.S.C. § 2241. *Stringer v. Williams*, 161 F.3d 259, 262 (5th Cir. 1998) (noting that 28 U.S.C. § 2254 applies to post-trial petitions while pretrial petitions are properly brought under § 2241). Although there is no statutory requirement that a prisoner exhaust available remedies before filing a petition for writ of habeas corpus under § 2241, the United States Court of Appeals for the Fifth Circuit requires state pretrial detainees to exhaust available remedies through the state courts or other available state

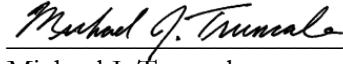
procedures before filing a federal petition. *Dickerson v. Louisiana*, 816 F.2d 220, 225 (5th Cir. 1987).

There are state court remedies available to the petitioner, such as filing an application for writ of habeas corpus pursuant to Article 11.08 of the Texas Code of Criminal Procedure, but the petitioner states that he has not pursued relief in the state courts. Because the petitioner has not exhausted state court remedies, the magistrate judge correctly concluded that the petition should be dismissed without prejudice.

O R D E R

Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct, and the report and recommendation of the magistrate judge is **ADOPTED**. An amended final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED this 20th day of May, 2021.



Michael J. Truncale
United States District Judge